

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-4065

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 25, 2019
DEBORAH S. HUNT, Clerk

GHEORGHE LATES,)	
)	
Petitioner,)	
)	ON PETITION FOR REVIEW
v.)	FROM THE UNITED STATES
)	BOARD OF IMMIGRATION
WILLIAM P. BARR, Attorney General,)	APPEALS
)	
Respondent.)	

ORDER

Before: SUHRHEINRICH and WHITE, Circuit Judges.

Gheorghe Lates, represented by counsel, petitions the court to review an order of the Board of Immigration Appeals (BIA) affirming an immigration judge's (IJ) order denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). The parties have waived oral argument, and the panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Lates is a native and citizen of Romania, and he was a deacon in the Romanian Orthodox Church. Lates came to the United States in 2002 on a B2 visitor visa to study at a monastery in New York. Lates testified that the monastery filed a petition for him to receive a religious workers' visa, which he thought had been approved, but which he had never used. Lates left the monastery several years later, moved to Cleveland, married an American citizen, and then got divorced. Lates's wife filed an application for Lates to become a lawful permanent resident, but she withdrew the petition at or near the time their relationship unraveled. Lates began a relationship with another

No. 18-4065

- 2 -

woman, with whom he has three children. Each of Lates's children is an American citizen. In 2011, the Department of Homeland Security served Lates with a notice to appear, charging that he was removable because he remained in the United States for longer than he was authorized.

Lates conceded removability and filed applications for asylum, withholding of removal, and protection under the CAT. Lates testified that if he were removed to Romania he would be an outcast and subjected to persecution, ridicule, and harassment from his fellow countrymen. He was also concerned that his children would be bullied in school and that his daughter would not receive appropriate medical care for her heart condition in Romania. Lates testified that he delayed filing his asylum application because he was unsure about his immigration status during his marriage. The priest of Lates's Romanian Orthodox Church in Cleveland testified that if Lates returned to Romania he would face prejudice, but "I cannot say that he will be killed, that he will be persecuted or put in jail."

The IJ ruled that Lates's asylum application was untimely because he filed it more than one year after he entered the United States. *See* 8 U.S.C. § 1158(a)(2)(B). The IJ rejected Lates's claim that his uncertainty about his immigration status during his marriage was a change in circumstances that materially affected his eligibility for asylum or was an extraordinary circumstance related to his delay in filing a timely application. *See* 8 U.S.C. § 1158(a)(2)(D). Alternatively, the IJ found that Lates had not been subjected to past persecution and that the possibility of being shunned by the community in Romania did not establish a well-founded fear of future persecution. The IJ also found that Lates failed to show that he could not safely relocate to another area of Romania and that his daughter's medical condition was not a basis for withholding of removal. Because Lates failed to establish that he was entitled to asylum, the IJ concluded that he could not meet the higher standard required to obtain withholding of removal. Finally, the IJ ruled that Lates was not entitled to protection under the CAT because he failed to show that the Romanian government engages or acquiesces in the torture of former church deacons or that it consents to the torture of its citizens. The IJ thus denied all three of Lates's applications.

No. 18-4065

- 3 -

Lates filed a timely appeal, but the BIA held that he waived his claim for relief under the CAT because his brief did not meaningfully challenge the IJ's decision on that issue. The BIA affirmed the IJ's findings that Lates's asylum application was late and that he failed to demonstrate changed circumstances. The BIA also agreed with the IJ that Lates failed to prove that he had a well-founded fear of future persecution and that he could not safely relocate to another part of Romania. The BIA therefore dismissed Lates's appeal.

Lates filed a timely petition for review of the BIA's order. Lates argues that the BIA erred in holding that the evidence was insufficient to find that he would be subjected to persecution if he were removed to Romania. He also argues that his reliance on the monastery's petition to obtain a religious workers' visa for him and his decision to leave the church were changed circumstances that excuse his untimely asylum application.

Lates's petition for review challenges the IJ's determination that he failed to establish changed circumstances that excused the untimely filing of his asylum application. An alien must file his application for asylum within one year of entering the United States, 8 U.S.C. § 1158(a)(2)(B), unless he demonstrates "the existence of changed circumstances which materially affect [his] eligibility for asylum or extraordinary circumstances relating to the delay in filing an application," 8 U.S.C. § 1158(a)(2)(D). Lates conceded that his asylum application was untimely. And except for constitutional challenges and questions of statutory interpretation, neither of which Lates raises in his petition, we do not have jurisdiction to review the BIA's factual determination that an alien failed to demonstrate changed circumstances. *See Gafurova v. Sessions*, 712 F. App'x 540, 547 (6th Cir. 2017). And we lack jurisdiction to review the IJ's decision denying Lates's application for relief under the CAT because he failed to brief that issue in the BIA properly. *See Hasan v. Ashcroft*, 397 F.3d 417, 419-20 (6th Cir. 2005). Accordingly, we dismiss Lates's petition for lack of subject-matter jurisdiction to the extent that he seeks review of the BIA's orders denying his applications for asylum and relief under the CAT.

No. 18-4065

- 4 -

Lates argues that the IJ erred in finding that he failed to prove that he would be subjected to persecution if he returned to Romania. We review the BIA's legal conclusions de novo, *see Parlak v. Holder*, 578 F.3d 457, 462 (6th Cir. 2009), and its factual findings under the substantial-evidence standard, under which we uphold the BIA's decision as long as it is supported by reasonable, substantial, and probative evidence on the record as a whole, *see Marouf v. Lynch*, 811 F.3d 174, 180 (6th Cir. 2016). "[A]dministrative findings of fact are conclusive[,] unless any reasonable adjudicator would be compelled to conclude to the contrary." *Id.* (quoting 8 U.S.C. § 1252 (b)(4)(B)).

To qualify for withholding of removal, the applicant must establish a "clear probability" that his life or freedom will be threatened because of his membership in a particular social group if he returns to the proposed country of removal. *See Zaldana Menijar v. Lynch*, 812 F.3d 491, 498 (6th Cir. 2015). A "clear probability" means that it is more likely than not that the applicant would be subject to persecution in the country of removal. *See Kamar v. Sessions*, 875 F.3d 811, 817 (6th Cir. 2017). Persecution requires "physical punishment, infliction of harm, or significant deprivation of liberty," *Mikhailevitch v. INS*, 146 F.3d 384, 390 (6th Cir. 1998), and includes "detention, arrest, interrogation, prosecution, imprisonment, illegal searches, confiscation of property, surveillance, beatings, or torture," *Haider v. Holder*, 595 F.3d 276, 286-87 (6th Cir. 2010) (quoting *Zacarias v. Gonzales*, 232 F. App'x 458, 462 (6th Cir. 2007)).

The record does not compel a conclusion that Lates would be persecuted if he were removed to Romania. Lates principally described how he would be harassed and ridiculed in Romania, but his testimony concerning being at risk of physical abuse from others because of his status as a former clergyman was vague at best, and verbal harassment without physical punishment is not persecution. *See id.* at 286. The priest of Lates's church testified that Lates would not be killed, persecuted, or jailed if he returned to Romania, and the State Department's report on religious freedom in Romania does not indicate that former Romanian Orthodox clergymen are vulnerable to physical abuse. Lates also argues that being ostracized from the

No. 18-4065

- 5 -

community would result in economic persecution, but the record does not compel a conclusion that “the potential economic disadvantage is deliberately imposed as a form of punishment . . . and amounts to more than discrimination.” *Jaars v. Gonzales*, 148 F. App’x 310, 315 (6th Cir. 2005).

Accordingly, we **DISMISS** Lates’s petition to review the BIA’s order denying his applications for asylum and protection under the CAT and **DENY** his petition to review the BIA’s order denying his application for withholding of removal.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk